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Counsel for Third-Party Defendant DOROTHY ANDERSON,
Trustee of The Anderson Marital and Anderson Tax Deferral Trusts

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PALMTREE ACQUISITION
CORPORATION, a Delaware corporation,

Plaintiff,

vs.

MICHAEL R. NEELY, an individual, *et al.*,

Defendants.

Case No. 08-CV-3168-EMC

**STIPULATION AND [PROPOSED] ORDER
RE DOROTHY ANDERSON'S RESPONSE
TO KIRRBERG CORPORATION'S AND
STARK INVESTMENT COMPANY'S
FOURTH AMENDED THIRD PARTY
COMPLAINT**

Action filed: July 1, 2008

Trial date: none set

KIRRBERG CORPORATION, formerly
known as MULTIMATIC CORPORATION, a
New Jersey corporation; and STARK
INVESTMENT COMPANY, L.P., a California
limited partnership,

Third-Party Plaintiffs,

vs.

DOROTHY ANDERSON, Trustee of The
Anderson Marital Trust and The Anderson Tax
Deferral Trust, both dated February 28, 1979, as
amended and restated August 31, 1994,

Third-Party Defendant.

AND RELATED CROSSCLAIMS AND
COUNTERCLAIMS.



RECITALS

A. Plaintiff Palmtree Acquisition Corporation (“Plaintiff”) filed this action (“Action”) as what it describes as a “reopener” of a prior action that was conditionally settled, which prior action was filed on February 3, 1993 in the United States District Court for the Northern District of California, entitled *Grubb & Ellis Realty Trust v. Catellus Development Corp., et al.*, and related crossactions, Case No. C93-0383 SBA (“Prior Action”).

B. In the course of litigating the Prior Action, the parties to the Prior Action engaged in discovery relating to the factual background, ownership and operations of certain of the parties to the Prior Action and their conduct which may have resulted in the PCE contamination.

C. On February 7, 1994, the parties to the Prior Action entered into a settlement agreement (“1994 Settlement”). On February 17, 1994, this Court entered an order approving the settlement agreement and dismissing the Prior Action.

D. Pursuant to the 1994 Settlement, the parties agreed that the release amongst each other would not extend to:

. . . any claims, causes of action, obligations, damages, expenses or liabilities resulting from (1) claims or cross-claims arising from actions brought by third parties after the date of this agreement relating to PCE [perchloroethylene] contamination at the properties, or (2) actions by governmental agencies requiring cleanup of PCE contamination or seeking recovery of governmental response costs for the cleanup of PCE contamination: (a) of the deeper aquifer as defined in Paragraph 5 of SCO [Site Cleanup Order], or (b) in the form of DNAPLs, defined as PCE found in pore-water concentrations which exceed their effective solubilities as measured using the residual DNAPL detection method of Feenstra, Mackay, and Cherry (1991). The limitations expressed in the preceding sentence on the release contained in this paragraph are referred to as “the Paragraph 9 reopeners.”

E. On March 17, 2008, and March 21, 2008, the California Regional Water Quality Control Board (“RWQCB”), a governmental agency, sent letters to certain of the defendants and the plaintiff, and/or their predecessors, requiring the further investigation and monitoring of PCE contamination which potentially impacted the deeper aquifer that may be in the form of DNAPLs, thereby allegedly triggering the “Paragraph 9 reopeners” (“RWQCB Directives”). As a result of the RWQCB Directives, certain parties to the prior 1994 Settlement, made a demand upon other parties asserting that the Paragraph 9 reopener applied and demanding that they respond to the RWQCB Directives.

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1 F. On July 1, 2008, plaintiff Palmtree Acquisition Corporation, the successor to one of the 1994
2 Settlement parties, Catellus Development Corporation, initiated this Action by filing a Complaint for
3 CERCLA Cost Recovery, Damages and Declaratory Relief, seeking contribution and damages (“the
4 Original Complaint”) against certain of other parties to the 1994 Settlement, pursuant to the Paragraph
5 9 reopener.

6 G. Defendant The Grubb & Ellis Realty Income Trust, Liquidating Trust (“GERIT”) has not
7 appeared, is not represented by counsel, and claims to have dissolved and to no longer exist, and thus
8 is not a party to this stipulation.

9 H. On September 15, 2008 Judge Edward M. Chen signed a stipulation and order (Document No.
10 13) providing that, among other things, the defendants were deemed to have denied each and every
11 allegation in the Original Complaint, that defendants were deemed to have filed crossclaims against
12 each other for contribution and indemnity, and deemed to have filed counterclaims for contribution and
13 indemnity against Plaintiff.

14 I. Subsequent to the filing of the Original Complaint, certain parties agreed to cooperate in
15 jointly retaining an environmental consultant to respond to the RWQCB Directives. The environmental
16 consultant has been engaged with the RWQCB and the parties have made progress towards meeting
17 the demands of the RWQCB.

18 J. Subsequent to the filing of the Original Complaint, the parties participated in mediation with
19 Timothy Gallagher, Esq., during which the parties engaged in an in depth discussion and investigation
20 relating to the factual background, ownership and operations of the parties and their conduct which may
21 have resulted in the PCE contamination.

22 K. On July 14, 2010 plaintiff Palmtree Acquisition Corporation filed its First Amended
23 Complaint (“FAC”), adding Northrop Grumman Systems Corporation (“Northrop Grumman”) as a
24 party. Northrop Grumman has settled this matter and been dismissed with prejudice from this Action
25 and thus is not a party to this stipulation.

26 L. On July 14, 2011 plaintiff Palmtree Acquisition Corporation filed its Second Amended
27 Complaint (the “Current Action” or “SAC”), clarifying plaintiff’s intent to include in the Original
28 Complaint and/or adding defendants John McCorduck, Kathleen McCorduck, Pamela McCorduck,



1 Sandra McCorduck Marona, (“collectively the “Individual McCorduck Defendants”) and IMA Financial
2 Corporation (“IMA Financial”).

3 M. On July 28, 2011 a stipulation and proposed order was filed in which the parties who signed
4 the stipulation agreed that the signing defendants would be deemed to have denied each and every
5 allegation in the SAC and would be deemed to have filed crossclaims and counterclaims for
6 contribution and indemnity.

7 N. The Individual McCorduck Defendants and IMA Financial were not parties to the July 28,
8 2011 stipulation and proposed order because they had not yet been served with the SAC or waived
9 service.

10 O. On August 3, 2011 the Court filed an order approving the July 28, 2011 stipulation.

11 P. The Individual McCorduck Defendants and IMA Financial then waived service of the SAC.

12 Q. On August 24, 2011 Defendants Stark Investment Company and The Kirrberg Corporation
13 fka Multimatic Corporation filed a Fourth Amended Third Party Complaint for CERCLA Contribution,
14 Declaratory Relief and Equitable Indemnity against Dorothy Anderson in her capacity as Trustee of The
15 Anderson Marital Trust and Anderson Tax Deferral Trust.

16 R. On September 13, 2011 Third-Party Defendant Dorothy Anderson filed a Motion to Dismiss
17 and Strike Kirrberg Corporation’s and Stark Investment Company’s Fourth Amended Third Party
18 Complaint (“FATC”) or, in the Alternative, Motion for a More Definite Statement.

19 S. On October 24, 2011 the Court denied those motions.

20 T. On October 25, 2011 a stipulation and proposed order was filed in which the parties who
21 signed the stipulation to the SAC agreed that the signing defendants, the Individual McCorduck
22 Defendants and IMA Financial, would be deemed to have denied each and every allegation in the SAC
23 and would be deemed to have filed crossclaims and counterclaims for contribution and indemnity
24 (except for crossclaims and counterclaims as between the Individual McCorduck Defendants, IMA
25 Financial and/or McCorduck Properties Livermore, LLC).

26 U. On October 27, 2011 the Court filed an order approving the October 25, 2011 stipulation,
27 which is not superseded or altered hereby.

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1 Therefore, in the interest of judicial economy, pursuant to Local Rule 6-1(b) and 7-12, the parties
2 below hereby agree and stipulate as follows:

3 **STIPULATION**

4 1. Third-Party Defendant Dorothy Anderson, as Trustee of The Anderson Marital Trust and
5 Anderson Tax Deferral Trust, shall be deemed to have denied each and every allegation in the FATC.

6 2. Third-Party Defendant Dorothy Anderson, as Trustee of The Anderson Marital Trust and
7 Anderson Tax Deferral Trust, shall be deemed to have filed counterclaims for contribution and
8 indemnity against Third-Party Plaintiffs Stark Investment Company and The Kirrberg Corporation fka
9 Multimatic Corporation, and shall be deemed to have filed crossclaims and/or counterclaims against
10 all other parties in the Current Action for contribution and indemnity.

11 3. Plaintiff and each defendant who have signed this stipulation and proposed order shall be
12 deemed to have filed crossclaims and/or counterclaims against Third-Party Defendant Dorothy
13 Anderson, as Trustee of The Anderson Marital Trust and Anderson Tax Deferral Trust, for contribution
14 and indemnity. Plaintiff reserves the right to amend its complaint to add or remove allegations, to add
15 new parties, or to make any other changes consistent with the Federal Rules of Civil Procedure.

16 4. Third-Party Defendant Dorothy Anderson, as Trustee of The Anderson Marital Trust and
17 Anderson Tax Deferral Trust, reserves her right to supplement her response to the FATC, and may file
18 an answer and separate crossclaims and/or counterclaims at a later date, but no later than 60 days
19 following the conclusion of mediation with mediator Timothy Gallagher, currently underway.
20 Mediation will be concluded at such time as: (a) a settlement is reached, or (b) the mediator issues a
21 letter concluding that a settlement has not been reached and the mediation is concluded. Third-Party
22 Defendant Dorothy Anderson, as Trustee of The Anderson Marital Trust and Anderson Tax Deferral
23 Trust, has not waived her right to assert affirmative defenses or to file crossclaims and/or counterclaims.

24 5. Third-Party Defendant Dorothy Anderson, as Trustee of The Anderson Marital Trust and
25 Anderson Tax Deferral Trust, further reserves her right to bring in and file claims against additional
26 parties who are not parties to this Current Action, and reserves any and all rights against such additional
27 third parties.

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Wherefore, the parties respectfully request that the Court approve this Stipulation.

DATED: November 10, 2011

Respectfully submitted,

PALADIN LAW GROUP® LLP

By: /s/ *Brian R. Paget*

John R. Till
Brian R. Paget
Attorneys for Third-Party Defendant
DOROTHY ANDERSON, Trustee of The
Anderson Marital Trust and The Anderson Tax
Deferral Trust

DATED: November 10, 2011

COX, CASTLE & NICHOLSON LLP

By: /s/ *Peter M. Morrisette*

Stuart I. Block
Peter M. Morrisette
Attorneys for Plaintiff
PALMTREE ACQUISITION CORPORATION,
a Delaware corporation f/k/a Catellus
Development Corporation

DATED: November 10, 2011

BASSI EDLIN HUIE & BLUM LLP

By: /s/ *Noel Edlin*

Noel Edlin
Attorneys for Defendants
MICHAEL R. NEELY, an individual; PERRY J.
NEELY, an individual; GARY NEELY, an
individual; MICHAEL R. NEELY, PERRY J.
NEELY and GARY NEELY dba MIKE'S ONE
HOUR CLEANERS

DATED: November 10, 2011

GONSALVES & KOZACHENKO

By: /s/ *Selena P. Ontiveros*

Selena P. Ontiveros
Attorneys for Defendant and Third-Party Plaintiff
STARK INVESTMENT COMPANY, a
California limited partnership

///



1 DATED: November 10, 2011

DONGELL LAWRENCE FINNEY LLP

2 By: /s/ *Ian P. Culver*

3 Thomas F. Vandenburg

4 Ian P. Culver

5 Attorneys for Defendant and Third-Party Plaintiff
KIRRBURG CORPORATION, formerly known
as MULTIMATIC CORPORATION, a New
Jersey corporation

7 DATED: November 10, 2011

ROGERS JOSEPH O'DONNELL

8 By: /s/ *D. Kevin Shipp*

9 Robert C. Goodman

10 D. Kevin Shipp

11 Attorneys for Defendants

CHARLES FREDERICK HARTZ dba PAUL'S
SPARKLE CLEANERS; CHARLES F. HARTZ,
an individual

13 DATED: November 10, 2011

GORDON WATROUS RYAN
LANGLEY BRUNO & PALTENGHI INC.

14 By: /s/ *Bruce Clinton Paltenghi*

15 Bruce Clinton Paltenghi

16 Attorneys for Defendants

17 McCORDUCK PROPERTIES LIVERMORE,
LLC, a Delaware limited liability company
individually and as the successor to JOHN
18 McCORDUCK, KATHLEEN McCORDUCK,
PAMELA McCORDUCK, SANDRA
19 McCORDUCK MARONA and IMA
FINANCIAL CORPORATION, a California
20 corporation, and for JOHN McCORDUCK;
individually; KATHLEEN McCORDUCK,
21 individually; PAMELA McCORDUCK,
individually; SANDRA McCORDUCK
22 MARONA; individually

24 DATED: November 10, 2011

STANZLER LAW GROUP

25 By: /s/ *Jordan S. Stanzler*

26 Jordan S. Stanzler

27 Attorneys for Defendant

IMA FINANCIAL CORPORATION, a
California corporation

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DATED: November 10, 2011

FOLEY MCINTOSH FREY & CLAYTOR

By: */s/ James D. Claytor*

James D. Claytor
Attorneys for Defendant
WESTERN STATES DESIGN, a California
corporation

DATED: November 10, 2011

THE COSTA LAW FIRM

By: */s/ Daniel P. Costa*

Daniel P. Costa
Attorneys for Defendant
STARK INVESTMENT COMPANY

IT IS SO ORDERED.

DATED: 11/14/11

